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No. 94-589

In The

Supreme Court of the United States

October Term, 1994

MURLEY HERNANDEZ LEBLANC, ET AL.,

Petitioners,

versus

LUIS MEZA, M.D., ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

BRIEF OF RESPONDENTS IN OPPOSITION

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TABLE OF CONTENTS

Page

I. Table of Contents i

II. Table of Authorities ii

III. Statement of the Case 1

IV. Argument 2

V. Conclusion 4

TABLE OF AUTHORITIES

Page

I. Federal Cases

Bankers Life and Cas. Co. v. Crenshaw, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed.2d 62 (1988) 2, 3

Clark v. Jeter, 486 U.S. 456, 108 S.Ct. 1910 (1988)..... 3

Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) 1

Nordlinger v. Hahn, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992) 3

Texaco, Inc. v. Short, 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982)..... 2

Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988) 2

II. State Cases

Crier v. Whitecloud, 496 So.2d 305 (La. 1986)..... 3

State v. Madere, 352 So.2d 666 (La. 1977) 1

STATEMENT OF THE CASE

Respondents wish to clarify the scope of the constitutional issues raised in the courts below, a matter addressed at page 14 of Petitioners' Petition to this Court. Federal and State equal protection challenges were raised in Petitioners' pleadings in the trial Court, as arguably was a Federal *substantive* due process challenge.[1] However, the trial Court pleadings do not allege a Federal *procedural* due process violation, even by implication.

Petitioners presented *no* Federal constitutional arguments to the Court of Appeals. The opinion of that court notes that the constitutional issues presented were related to equal protection and adequate remedy provisions of the *state* Constitution.[2] The *Mennonite* procedural due process claim pressed before this Court was first explicitly stated in Petitioners' Application for Certiorari filed with the Louisiana Supreme Court.[3]

The Louisiana Supreme Court and the Courts of Appeal of that state ordinarily will not consider constitutional issues not first raised in the trial court or preserved in the lower appellate court. See, e.g., *State v. Madere*, 352

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[1] See Petition for Writ of Certiorari [hereinafter "Petition"], p. 80-82. The arbitrariness of the statute at issue was alleged, but the specific invocation of the Due Process Clause of the Federal Constitution was limited to Petitioners' challenge to the state's statutory limitation on damage awards and is absent from the alleged challenge to the limitations statute which is the subject of the instant Petition. [Compare Petition, p. 80-82 with Petition, p. 83].

[2] See Petition, p. 41-42.

[3] See Petition, p. 100-02.

So.2d 666, 669 (La. 1977). Likewise, this Court usually will not review constitutional issues not stated with particularity and passed upon by the state courts. *Bankers Life and Cas. Co. v. Crenshaw*, 486 U.S. 71, 75-78, 108 S.Ct. 1645, 1649-50. Whether the prerequisites to review by this Court are fully met in the instant case is questionable at best.

ARGUMENT

Procedural Due Process

The Fourteenth Amendment protects against deprivation of property interests, but only where the deprivation is the result of state action. See *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 485-87, 108 S.Ct. 1340, 1345-46 (1988). When the state's role is limited to the enactment of a "self-executing" limitations period, the private use of that state-sanctioned remedy does not amount to state action sufficient to implicate the Due Process Clause. *Id.*; see also *Texaco, Inc. v. Short*, 454 U.S. 516, 536, 102 S.Ct. 781, 796 (1982).

The Louisiana statute challenged by Petitioners is exactly the type of "self-executing" statute of limitations which this Court repeatedly has held does not involve the kind of state action required for purposes of the Fourteenth Amendment. Accordingly, Petitioners' procedural due process arguments are without merit.

Equal Protection

Under equal protection analysis, the Louisiana statute is presumed to be constitutional, and it is Petitioners' burden to prove otherwise. *Bankers Life and Cas. Co. v. Crenshaw,* 486 U.S. 71, 81, 108 S.Ct. 1645, 1652 (1988). Furthermore, since this case does not involve a suspect class or impingement on a fundamental right, neither strict scrutiny nor intermediate scrutiny is appropriate. Cf. *Clark v. Jeter,* 486 U.S. 456, 108 S.Ct. 1910 (1988), cited by Petitioners. *Clark* involved an illegitimate and for that reason this Court applied intermediate scrutiny. 486 U.S. at 461-62, 108 S.Ct. at 1914. Where, as here, minimum scrutiny applies, the Equal Protection Clause is satisfied so long as the challenged legislative classification is rationally related to a plausible governmental policy and based on facts which rationally may have been considered true by the legislature. *Nordlinger v. Hahn,* 112 S.Ct. 2326, 2331-32 (1992).

The Louisiana Supreme Court has found that the statute challenged by Petitioners is rationally related to the state's legitimate interest in promoting the availability of health care at a reasonable cost. *Crier v. Whitecloud,* 496 So.2d 305, 309 (La. 1986). The statute was enacted as part of a comprehensive effort to reduce the rate at which malpractice premiums escalate. *Id.,* at 308-09. The cost of malpractice premiums is passed on by the health care provider to the consumer. There was also some concern that escalating premiums would force some providers out of Louisiana. *Id.* Actuarial uncertainty caused by possible "long tail" exposure for insurers was seen as a primary cause of increasing insurance costs. *Id.* The enactment of

a firm three-year limitation period was intended to alleviate this problem. *Id.*

The statute at issue is rationally related to a legitimate state interest. Accordingly, Petitioners' equal protection challenge is without merit.

CONCLUSION

To the extent that they have been properly preserved, Petitioners' due process and equal protection challenges are, under settled principles repeatedly enunciated by this Court, without merit. Accordingly, Respondents respectfully submit that there is no reason for this Court to grant certiorari in order to review them.

Respectfully submitted,

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